IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9515 of 2005
With
SPECIAL CIVIL APPLICATION No. 9616 of 2005
To
SPECIAL CIVIL APPLICATION No. 9521 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HAVSINGBHAI KALIABHAI & 1 - Petitioner(s)

Versus

BADIYABHAI RAJIYABHAI MUNIA & 9 - Respondent(s)

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Appearance :
MR SUNIL S JOSHI for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2, 2.2.1, 2.2.2,2.2.3
NOTICE SERVED BY DS for Respondent(s) : 1 - 10.
- for Respondent(s) : 0.0.0
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2005

ORAL JUDGMENT

1. In all these petitions, the respective petitioners have challenged the legality and validity

of the judgment and order dated 25th April, 2005 passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.52 of 2003 in dismissing the same and confirming the order passed by the Collector, Dahod dated 29.11.2003 passed in Revision Application No.29.11.2003 passed in Revision Application No.42 of 2003.

2. It appears from the record that the land in question was original belonged to one Jokhanabhai Punabhai who had two wives viz Damaliben and Jumaliben. Said Damali had one daughter Punjaliben and the respondents Nos.1 to 6 herein are the heirs of the deceased Punjaliben. Another wife Jumaliben had one son Vestabhai. He had two sons viz. Nathiabhai and Kaliabhai and the petitioners are the heris of the said Nathiabhai and Kaliabhai. It appears from the record that initially the name of Bai Pujali was entered into the record of rights with regard to the land in question on 12.3.1950 vide Entry No.22. It appears from the record that

subsequently the name of Vestabhai was also mutated in the record of rights as joint owner vide entry No.52 dated 17.1.1953. It appears from the record that Civil Suit came to be filed by the respondent No.1 to 6 being Regular Civil Suit No.45 of 2001 before the Civil Court, Godhara with regard to ownership of the land in question. It appears from the record that the respondents Nos.1 to 6 – heirs of Bai Punjali challenged the Entry No.52 dated 17th January, 1953 after period of almost of 48 years before the Assistant Collector, Devgadh Baria being RTS Appeal No.36 of 2001 and the Assistant Collector, Devgadh Baria by its order dated 8.5.2003 dismissed the said appeal on the ground of limitation, however, passed the order that decision that will be rendered in Regular Civil Suit No.45 of 2001 would be binding upon the parties. It appears from the record that being aggrieved and dissatisfied with the order passed by the Assistant Collector, Devgadh Baria dated 8.5.2003 passed in RTS Appeal No.36 of 2001 the respondent Nos.1 – 6 herein preferred the RTS Revision Application No.42of 2003 before the

Collector, Dahod and the said appeal came to e allowed by the Collector, Dahod and by order dated 29th November, 2003 quashed and set aide the order passed by the Assistant Collector, Devgadh Baria dated 8.5.2003 and also quashed and set aside the entry No.52 dated 17.1.1953, however, also passed the order that the decision that may be rendered in the Regular Civil Suit No.45 of 2001 would be binding upon the parties. Being aggrieved and dissatisfied of the order passed by the Collector, Dahod dated 29th November, 2003 passed in RTS Revision Application No.42 of 2003, the petitioners preferred the revision application before the Secretary (Appeals), Revenue Department, State Government which was numbered as Revision Application NO.52 of 2003 which came to be dismissed by the Joint Secretary (Appeals), Revenue Department, State Government by its judgment and order dated 25th April, 2005. Being aggrieved and dissatisfied with the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 25.4.2005 passed in Revision Application No.52 of 2003 in dismissing the same and

confirming the order passed by the Collector, Dahod dated 29.11.2003 passed in RTS Revision Application No.42 of 2003 in setting aside the entry No.52 dated 17.1.1953, the petitioners have preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

3. Shri Sunil S. Joshi, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Collector, Dahod has not properly appreciated that there was delay of 48 years in challenging the entry which was not required to be quashed and set aside after a period of 48 years. He has also further submitted that when the suit is pending between the parties and parties concerned are before the Civil Court, the entry was not required to be set aside by him and he could not have passed the order that said entry would be subject to the ultimate outcome of the decision of the Civil Court in aforesaid Regular Civil Suit No.45 of 2001. He has submitted that by quashing and setting aside the entry after 48 years is likely to create complication

and likely to create multiplicity of the proceedings and therefore, it is requested to allow the present special civil application. He has also submitted that as such the respondent No.1 to 6 had also prayed for an injunction in the aforesaid suit, however, subsequently the same was not pressed and on the contrary, they have prayed for restoration of the possession.

4. Shri Manav Mehta, learned advocate appearing on behalf of the respondent Nos.1 to 6 has tried to support the judgment and orders passed by the Collector, Dahod as well as the Joint Secretary (Appeals), Revenue Department, State of Gujarat. He has also submitted that when all the authorities below have held that the decision in the Civil Suit No.41 of 2001 would be binding to the parties, the orders passed by the Collector, Dahod as well as the revisional authorities are not required to be interfered with.

5. This Court has also heard Shri P.D.Bhate,

learned AGP appearing on behalf of the respondent – State Authorities along with the learned advocates for the respective parties.

6. It is not in dispute that the entry No.52was mutated on 17th January, 1953 and that the same was challenged by the respondent Nos.1 to 6 before the Assistant Collector, Devgadh Bariya after almost period of 48 years. Therefore, as such, the same was not required to be interfered with and / or quashed and set aside by the Collector, wherein the entry was challenged after period of almost 48 years. Be that it may but fact remains that the dispute with regard to ownership is pending before the learned Civil Judge(SD), Godhara being Regular Civil Suit No.45 of 2001. Even all the authorities below have held that the decision that will be rendered by the Civil Court in the aforesaid Civil Suit No.45 of 2001 will be binding upon the parties. It is also required to be noted that the entries in the revenue record are only for the fiscal purpose for collecting the

revenue by the Government Authorities and they do not confer any right, title or interest upon the parties in whose favour the entry is made and it is only showing the prima facie possession and for the aforesaid purpose only. If there is any dispute between the parties with regard to ownership, then, civil court is the competent forum and the parties to abide by the decision that may be rendered by the Civil Court and on that basis necessary mutation entries can be made in the revenue record. Under the circumstances, as such, the Collector, Dahod as well as the Secretary (Appeals), Revenue Department, State of Gujarat were not justified in quashing and setting aside the Entry No.52 dated 17th January, 1953. Under the circumstances, while modifying and quashing and setting aside the order passed by the the Collector, Dahod confirmed by the Secretary (Appeals), Revenue Department, State of Gujarat so far as quashing and setting aside the Entry No.52 dated 17th January, 1953 with regard to the lands in question is required to be quashed and set aside and are hereby quashed and set aside. However, it is made clear that the

aforesaid entry No.52 dated 17th January, 1953 would be subject to the ultimate outcome of the Civil Suit No.45 of 2001 pending before the learned Civil Judge (S.D.), Godhara and necessary entries can be made on the basis of the judgment and decree that may be passed by the Civil Court. It is further ordered that the competent authority may make an additional note / entry in the said Entry No.52 to the effect that the said entry is subject to the ultimate decision that may be rendered by the Civil Judge (S.D.), Godhara in Civil Suit No.45 of 2001 to avoid any further complicity and multiplicity of proceedings.

7. For the reasons stated above, the petition succeeds in part. Rule is made absolute to the aforesaid extent in each of the matter, however, there will be no order as to costs.

[M.R.Shah, J.]

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